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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,628	01/22/2002	Thomas James Klofta	7571RD	7063
27752	7590	12/14/2004	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 12/14/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/054,628	KLOFTA ET AL.
	Examiner	Art Unit
	Jacqueline F Stephens	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 September 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection. However, with respect to Applicant's argument regarding the Roe reference and the teaching of cellulose derivatives affecting the rheological properties of the Roe lotion composition, the argument is not persuasive. Roe teaches the cellulose derivatives are used as a stabilizer. A rheological agent in a lotion composition generally affects the ability of the composition to flow or be deformed. A stabilizer also affects the deformation of the composition. Therefore, Roe discloses cellulose derivatives as a rheological agent as broadly as claimed.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-4 rejected under 35 U.S.C. 103(a) as being unpatentable over Roe USPN 5609587 in view of Santhanam et al. USPN 5416158.

As to claim 1, Roe discloses the present invention substantially as claimed. However, Roe does not disclose the exact amount of a rheological agent present in the lotion composition. Roe teaches the lotion composition can have optional components, such as a stabilizer (col. 23, lines 35-36). Roe recognizes the amount of the components can be varied and this will affect the viscosity of the lotion composition (col. 10, lines 38-42). Roe, therefore recognizes the stability of the composition is a result effective variable of percentage of components used, including the percentage of the rheological agent. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Roe with the claimed amount of rheological agent, since discovering an optimum value of a result effective variable involves only routine skill in the art.

The absorbent article comprises:

- a) a vapor permeable backsheet (col. 6, lines 2-3);

- b) a liquid pervious topsheet 520 positioned in facing relation with the backsheet 530;

c) an absorbent core **540** located between said backsheet and said topsheet (Roe col. 5, line 66 through col. 6, line 1);

and d) a skin care composition on at least a portion of a wearer-contacting surface of the absorbent article (Roe Abstract and col. 10, lines 25-31), which comprises from about 10 to about 95 weight percent of an emollient (Roe col. 17, lines 61-64) and from about 5 to about 90 weight percent of a wax (Roe col. 21, lines 35-38). Roe discloses the use of other components, such as stabilizers and viscosity modifiers (col. 23, lines 27-44). However, Roe does not specifically disclose the use of the claimed rheological agents. Santhanam discloses the claimed rheological agents in personal care products to impart a smooth feel and texture to the products (Santhanam col. 1, lines 20-59). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the skin care composition of Roe to include one of the claimed rheological agents for the benefits taught in Santhanam.

As to claim 2, Roe/Santhanam discloses the emollient is selected from the claimed group of materials (Roe col. 15, line 47 through col. 16, line 24).

As to claim 3, Roe/Santhanam discloses the emollient is a petroleum-based emollient selected from the group consisting of petrolatum, mineral oil, and mixtures thereof (Roe col. 16, lines 6-33).

As to claim 4, Roe/Santhanam discloses the wax is selected from the group consisting of the claimed materials (Roe col. 21, lines 20-24).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571)272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jacqueline F Stephens
Examiner
Art Unit 3761

December 10, 2004